

AGENDA ITEM



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: City Council discussion and direction regarding Assembly Bill 2476 (Wolk) concerning the expansion of the Delta Protection Commission land use authority

MEETING DATE: May 18, 2004

PREPARED BY: Community Development Director

RECOMMENDED ACTION: That the City Council consider Assembly Bill (AB 2476) concerning the expansion of the Delta Protection Commission's land use authority and authorize the Mayor to send appropriate correspondence.

BACKGROUND INFORMATION: Assembly Bill 2476 has been introduced and is currently making its way through the various legislative committees. The bill would revise the voting membership of the Commission primarily from current reclamation districts to special interest groups such as agriculture, environmental and recreation.

Additionally, the bill would revise the Commission's powers and duties by identifying lands within the secondary zone of the delta that, if developed, would have an impact on the primary zone. The Commission's authority and local government's duties with respect to those lands in the secondary zone would be modified as well.

The bill would require a local government's general plan for the secondary zone that results in the conversion of agricultural land from a rural use to an urban classification to comply with specified mitigation relating to easements or fees.

From staff's perspective, the key policy issue to consider is twofold. First, does the legislation have impact on the City? Both Richard Prima and I have reviewed the language and we are not convinced it will impact us one way or another. The City's White Slough property is located within the secondary zone of the delta, but as we have seen, other State regulatory agencies have exerted control over our activities. The second issue to consider is a bit broader as it relates to the State usurping a local jurisdiction's land use authority by imposing a State mandate.

APPROVED:


H. Dixon Flynn, City Manager

Council Communication
May 18, 2004
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Other cities within the County (Stockton, Lathrop & Tracy) have taken positions to oppose this legislation. Clearly for these communities the potential impact is greater due to the proximity of the secondary zone. The League of California Cities has taken a "watch" position for the bill. Currently it is scheduled for the Assembly Appropriations Committee on May 19th.

I have attached a copy of the bill in its most current format as well as a copy of the delta zones.



Konradt Bartlam
Community Development Director

KB/lw

Attachments

cc: Public Works Director

BILL NUMBER: AB 2476 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 26, 2004
AMENDED IN ASSEMBLY MARCH 23, 2004

INTRODUCED BY Assembly Member Wolk

FEBRUARY 19, 2004

An act to amend Sections 29702, 29703, 29705, 29706, 29707, 29735, 29741, 29753, 29756, 29756.5, 29760, 29761, 29762, 29763, 29763.5, 29764, 29765, 29771, 29776, and 29777 of, to add Sections 29740.5 and 29765.5 to, and to repeal Section 29761.5 of, the Public Resources Code, relating to the Sacramento-San Joaquin Delta.

LEGISLATIVE COUNSEL'S DIGEST

AB 2476, as amended, Wolk. Sacramento-San Joaquin Delta.

(1) Existing law creates the Delta Protection Commission and specifies that the membership includes, among others, one member from each of the 5 different reclamation districts located within the primary zone who is a resident of the delta and elected by the trustees of the reclamation districts, and the Director of Parks and Recreation, the Director of Fish and Game, the Director of Food and Agriculture, the ~~executive officer~~ Executive Officer of the State Lands Commission, the Director of Boating and Waterways, and the Director of Water Resources, or their designees. Existing law also authorizes each reclamation district to nominate one director to be a member of the commission.

This bill would, instead of the members specified above, require membership of the commission to include 2 members who are representative of agricultural interests, 2 members who are representative of environmental interests, 2 members who are representative of recreation interests, 2 members representing reclamation districts, the public member of the California ~~Bay-Delta~~ Bay-Delta Authority appointed by the Governor to represent the Sacramento and San Joaquin River Delta Region, the Secretary of the Resources Agency or the secretary's designee, and the Secretary of Food and Agriculture or the secretary's designee. The bill would also add specified nonvoting members to the commission.

The bill would also revise certain legislative findings relating to the delta.

(2) Existing law vests the commission with various powers and duties relating to the delta. Existing law requires local governments to undertake various actions with respect to the delta.

The bill would revise some of the commission's powers and duties, among other things, requiring the commission, by October 1, 2006, to identify lands within the secondary zone, that, if developed, would have an impact on the primary zone, and would expand the commission's authority, and local governments' duties, with respect to those lands within the secondary zone. By expanding local governments' duties, the bill would impose a state-mandated local program.

The bill would also provide that a change or update to the resource management plan adopted, reviewed, and maintained by the commission may be approved by the commission only after at least 3 public hearings, as specified.

(3) Existing law requires the Director of State Planning and Research to submit to the commission comments and recommendations on the resource management plan, before the commission adopts the plan.

The bill would also require the director to submit comments to the commission before the plan is updated.

(4) Existing law authorizes a person to appeal to the commission from specified actions by a local government or local agency with respect to the delta. If an appealed action is remanded by the commission to the local government or local agency, existing law authorizes the local government or local agency to modify the appealed action and resubmit the matter for review by the commission.

This bill would require, rather than authorize, the local government or local agency to modify the appealed action and resubmit it to the commission for review, thereby imposing a state-mandated local program.

(5) Existing law creates the San Joaquin Delta Protection Fund in the State Treasury and provides that any money in the fund is available, upon appropriation by the Legislature, for support of the commission in an amount not to exceed \$250,000 in any fiscal year.

This bill would delete the cap on the amount of money that may be appropriated from the fund for support of the commission in any fiscal year.

(6) The bill would require a local government's general plan amendment for the secondary zone that results in the conversion of agricultural land or habitat from a rural use to an urban classification, to comply with specified mitigation requirements relating to easements or fees for easements. By imposing that requirement on local governments, the bill would impose a state-mandated local program. *The bill would require those fees to be paid to the commission and deposited in the fund, as specified.*

(7) The bill would make other related substantive and unsubstantive changes and delete obsolete provisions of law.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
state-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 29702 of the Public Resources Code is amended to read:

29702. The Legislature further finds and declares that the basic goals of the state for the delta are the following:

(a) Protect, maintain, and, where possible, enhance and restore the overall quality of the delta environment and its historical importance, including, but not limited to, agriculture, wildlife habitat, and recreational activities.

(b) Assure orderly, balanced conservation and development of delta lands and resources.

(c) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

SEC. 2. Section 29703 of the Public Resources Code is amended to read:

29703. The Legislature further finds and declares as follows:

(a) The delta is an agricultural region of great value to the state and nation and the retention and continued cultivation and production of fertile peatlands and prime soils are of significant value.

(b) The agricultural land of the delta, while adding greatly to the economy of the state, also provides a significant value as open space and habitat for water fowl using the Pacific Flyway, as well as other wildlife, and the continued dedication and retention of that delta land in agricultural production contributes to the preservation and enhancement of open space and habitat values.

(c) Agricultural lands located within the primary zone should be protected from the intrusion of nonagricultural uses in the secondary zone.

SEC. 3. Section 29705 of the Public Resources Code is amended to read:

29705. The Legislature further finds and declares the following:

(a) The delta's wildlife and wildlife habitats, including waterways, vegetated unveeved channel islands, wetlands, and riparian forests and vegetation corridors, are highly valuable, providing critical wintering habitat for waterfowl and other migratory birds using the Pacific Flyway, as well as certain plant species, various rare and endangered wildlife species of birds, mammals, and fish, and numerous amphibians, reptiles, and invertebrates.

(b) These wildlife species and their habitat are valuable, unique, and irreplaceable resources of critical statewide significance, and it is the policy of the state to preserve and protect these resources and their diversity for the enjoyment of current and future generations.

(c) Wildlife habitat located within the primary zone should be protected from the intrusion of nonagricultural uses in the secondary zone.

SEC. 4. Section 29706 of the Public Resources Code is amended to read:

29706. The Legislature further finds and declares that the resource values of the delta have deteriorated, and that further deterioration threatens the maintenance and sustainability of the delta's agriculture, ecology, fish and wildlife populations, recreational opportunities, historical importance, and economic productivity.

SEC. 5. Section 29707 of the Public Resources Code is amended to read:

29707. The Legislature further finds and declares that there is no process by which state and national interests and values can be protected and enhanced for the delta, and that, to protect the regional, state, and national interests for the long-term agricultural productivity, economic vitality, historic value, and ecological health of the delta resources, it is necessary to provide and implement delta land use planning and management by local governments.

SEC. 6. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission consisting of 19 members as follows:

(a) One member of the board of supervisors of each of the five counties within the delta whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of the county.

(b) Three elected city council members shall be selected and appointed by city selection committees, from regional and area councils of government, one in each of the following areas:

(1) One from the north delta, consisting of the Counties of Yolo and Sacramento.

(2) One from the south delta, consisting of the County of San Joaquin.

(3) One from the west delta, consisting of the Counties of Contra Costa and Solano.

(c) Two members representative of agricultural interests (one of whom shall be a landowner or represent landowners within the primary zone).

(d) Two members representative of environmental interests (one of whom shall be a landowner or represent landowners within the primary zone).

(e) Two members representative of recreation interests (one of whom shall represent historic preservation interests).

(f) Two members representing reclamation districts within the primary and secondary zones of the delta, chosen through a selection process established by the five reclamation districts in the region.

(g) The public member of the California Bay-Delta Authority appointed by the Governor to represent the Sacramento and San Joaquin River Delta ~~(Delta)~~ (delta) Region.

(h) The Secretary of the Resources Agency, or the secretary's designee.

(i) The Secretary of Food and Agriculture, or the secretary's designee.

SEC. 7. Section 29740.5 is added to the Public Resources Code, to read:

29740.5. The director of each of the entities specified in subdivisions (a) to (g), inclusive, shall, and the director of each of the entities specified in subdivisions (h) to (k), inclusive, may, designate an employee of the entity to participate as a nonvoting member in the activities of the commission:

(a) Department of Parks and Recreation.

(b) Department of Water Resources.

(c) Department of Fish and Game.

(d) State Lands Commission.

(e) Department of Boating and Waterways.

(f) State Reclamation Board.

(g) Department of Conservation.

(h) United States Army Corps of Engineers.

(i) United States Natural Resources Conservation Service.

(j) United States Fish and Wildlife Service.

(k) National Marine Fisheries Service.

SEC. 8. Section 29741 of the Public Resources Code is amended to read:

29741. All of the commission's meetings shall be held in a city within the delta.

SEC. 9. Section 29753 of the Public Resources Code is amended to read:

29753. The commission may appoint advisory committees, as necessary, for the purpose of providing the commission with timely comments, advice, and information. The commission may appoint committees from its membership or may appoint additional advisory committees from members of other interested public agencies and private groups. The commission shall seek advice and recommendations from advisory committees appointed by local ~~government~~ ~~governments~~ that are involved in subject matters affecting the delta.

SEC. 10. Section 29756 of the Public Resources Code is amended to read:

29756. The commission may promote, facilitate, and administer the acquisition of voluntary private and public habitat and agricultural conservation easements in the delta.

SEC. 11. Section 29756.5 of the Public Resources Code is amended to read:

29756.5. The commission may act as the facilitating agency for

the implementation of any programs for multiobjective flood control, joint habitat restoration or enhancement, or agricultural land conservation, located within the primary zone and secondary zone of the delta.

SEC. 12. Section 29760 of the Public Resources Code is amended to read:

29760. (a) (1) The commission shall review and maintain the resource management plan for land uses within, and that may have an impact on, the primary zone of the delta.

(2) On or before October 1, 2006, the commission shall identify lands within the secondary zone, that, if developed, would have an impact on the primary zone.

(b) The resource management plan shall meet the following requirements:

(1) Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the delta.

(2) Conserve and protect the quality of renewable resources.

(3) Preserve and protect agricultural viability.

(4) Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures that advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair, and construction of both public and private levees.

(5) Preserve and protect delta dependent fisheries and their habitat.

(6) Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values of those resources on public lands and through voluntary cooperative arrangements with private property owners.

(7) Preserve and protect the water quality of the delta, both for instream purposes and for human use and consumption.

(8) Preserve and protect open-space and outdoor recreational opportunities.

(9) Preserve and protect private property interests from trespassing and vandalism.

(10) Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests.

(11) Preserve, protect, and maintain navigation.

(12) Protect the delta from any development that results in any significant loss of habitat or agricultural land.

(13) Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easements, between property owners and conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees.

(14) Permit water reservoir and habitat development that is compatible with other uses.

(c) The resource management plan shall not supersede the authority of local governments over areas within the secondary zone that do not impact the primary zone's resources.

(d) To facilitate, in part, the requirements specified in paragraphs (8), (9), (10), and (11) of subdivision (b), the commission shall include in the resource management plan, in consultation with all law enforcement agencies having jurisdiction in the delta, a strategy for the implementation of a coordinated marine patrol system throughout the delta that will improve law enforcement and coordinate the use of resources by all jurisdictions to ensure an adequate level of public safety. The strategic plan shall identify resources to implement that coordination. The commission does not have authority to abrogate the existing authority of any law enforcement agency.

(e) To the extent that any of the requirements specified in this

section are in conflict, nothing in this division shall deny the right of the landowner to continue the agricultural use of the land.

SEC. 13. Section 29761 of the Public Resources Code is amended to read:

29761. The Director of State Planning and Research shall submit comments and recommendations on the resource management plan for the commission's consideration, prior to the plan's adoption or update.

SEC. 14. Section 29761.5 of the Public Resources Code is repealed.

SEC. 15. Section 29762 of the Public Resources Code is amended to read:

29762. A change or update to the resource management plan may be approved by the commission only after at least three public hearings, with at least one hearing held in a city in the north delta, one hearing held in a city in the south delta, and one hearing held in a city in the west delta.

SEC. 16. Section 29763 of the Public Resources Code is amended to read:

29763. Within 180 days from the date of the adoption of the resource management plan or any amendments, changes, or updates, to the resource management plan, by the commission, all local governments shall submit to the commission proposed amendments that will cause their general plans to be consistent with the criteria in Section 29763.5 with respect to land located within the primary zone.

SEC. 17. Section 29763.5 of the Public Resources Code is amended to read:

29763.5. The commission shall act on proposed local government general plan amendments within 60 days from the date of submittal of the proposed amendments. The commission shall approve the proposed general plan amendments by a majority vote of the commission membership, with regard to lands within, or causing impact on the resources of, the primary zone, only after making all of the following written findings as to the potential impact of the proposed amendments, to the extent that those impacts will not increase requirements or restrictions upon agricultural practices in the primary zone, based on substantial evidence in the record:

(a) The general plan, and any development approved or proposed that is consistent with the general plan, are consistent with the resource management plan.

(b) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in wetland or riparian loss.

(c) The general plan, and development approved or proposed that is consistent with the general plan, will not result in the degradation of water quality.

(d) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in increased nonpoint source pollution.

(e) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or reduction of Pacific Flyway habitat.

(f) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in reduced public access, provided the access does not infringe on private property rights.

(g) The general plan, and any development approved or proposed that is consistent with the general plan, will not expose the public to increased flood hazard.

(h) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact agricultural lands or increase the potential for vandalism, trespass,

or the creation of public or private nuisances on public or private land.

(i) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in the degradation or impairment of levee integrity.

(j) The general plan, and any development approved or proposed that is consistent with the general plan, will not adversely impact navigation.

(k) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.

(l) The general plan, and any development approved or proposed that is consistent with the general plan, will not result in degradation to the cultural or historical value of delta communities.

SEC. 18. Section 29764 of the Public Resources Code is amended to read:

29764. This division does not confer any permitting authority upon the commission or require any local government to conform its general plan, or land use entitlement decisions, to the resource management plan, except with regard to lands within, or that may have an impact on, the primary zone. The resource management plan does not preempt local government general plans for lands within the secondary zone, except for those lands that have been identified as lands that, if developed, would have an impact on the primary zone.

SEC. 19. Section 29765 of the Public Resources Code is amended to read:

29765. Prior to the commission approving the general plan amendments of the local government, the local government may approve development within the primary zone only after making all of the following written findings on the basis of substantial evidence in the record:

(a) The development will not result in wetland or riparian loss.

(b) The development will not result in the degradation of water quality.

(c) The development will not result in increased nonpoint source pollution or soil erosion, including subsidence or sedimentation.

(d) The development will not result in degradation or reduction of Pacific Flyway habitat.

(e) The development will not result in reduced public access, provided that access does not infringe upon private property rights.

(f) The development will not expose the public to increased flood hazards.

(g) The development will not adversely impact agricultural lands or increase the potential for vandalism, trespass, or the creation of public or private nuisances on private or public land.

(h) The development will not result in the degradation or impairment of levee integrity.

(i) The development will not adversely impact navigation.

(j) The development will not result in any increased requirements or restrictions upon agricultural practices in the primary zone.

(k) The development will not result in degradation to the cultural or historical value of delta communities.

SEC. 20. Section 29765.5 is added to the Public Resources Code, to read:

29765.5. (a) A local government's general plan amendment for the secondary zone that results in the conversion of agricultural land or habitat from a rural use to an urban classification shall be mitigated by either agricultural or habitat conservation easements within the primary zone or areas of the secondary zone that may impact the resources of the primary zone or

fees equal to the value of obtaining those easements. The mitigation easements shall be in the amount of one acre for every acre of land converted, or the fees charged for the value of obtaining those easements shall be in the amount it would cost to obtain one acre of easement for every acre of land converted.

(b) When a person applies to a public agency of a local government subject to subdivision (a) for a building permit, license, certificate, or other entitlement for use, all fees required by subdivision (a) shall be paid by the local government to the commission and transmitted to the Treasurer for deposit in the Sacramento-San Joaquin Delta Protection Fund.

SEC. 21. Section 29771 of the Public Resources Code is amended to read:

29771. After a hearing on an appealed action, the commission shall either deny the appeal or remand the matter to the local government or local agency for reconsideration, after making specific findings. Upon remand, the local government or local agency shall modify the appealed action and resubmit the matter for review to the commission. A proposed action appealed pursuant to this section shall not be effective until the commission has adopted written findings, based on substantial evidence in the record, that the action is consistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, and this division.

SEC. 22. Section 29776 of the Public Resources Code is amended to read:

29776. The Sacramento-San Joaquin Delta Protection Fund is hereby created in the State Treasury. Any money in the Sacramento-San Joaquin Delta Protection Fund is available, upon appropriation by the Legislature, for support of the commission.

SEC. 23. Section 29777 of the Public Resources Code is amended to read:

29777. The commission shall not incur costs in excess of the amount of funds available for expenditure by the commission in any fiscal year.

SEC. 24. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Legal Delta and Zones

Primary Zone

Secondary Zone

County Boundary

Surface Streets

Major Highways

Hydrography

Delta Primary Zone

Delta Secondary Zone

Source: Department of Water Resources
1995

Delta Protection Commission

MILES  10



HEM B-2

Board of Supervisors
222 East Weber Ave
Courthouse, Room 701
Stockton, California 95202

LEROY ORNELLAS
Representing the Fifth District

Telephone: (209) 468-3113
Fax: (209) 468-3694
Scott Tyrrell
Legislative Assistant

May 7, 2004

The Honorable Lois Wolk
California State Assembly
5135 State Capitol, Room 6012
Sacramento, CA 95814

Reg: AB 2476 (Delta Protection Commission)

Dear Assemblymember Wolk,

As a Commissioner of the Delta Protection Commission, I have followed the development of AB 2476 with great concern.

As you know, we are a growing community in need of housing, road improvements, industry, and jobs. I fear that AB 2476 may have serious unintended consequences creating a negative impact on San Joaquin County's overall development.

The changes suggested by AB 2476 to the original Act will affect communities that have already been planned and begun development. I believe any additional impediments/fees may have a detrimental cause and effect. It is simply unfair to change the ground rules at this time.

I believe the Commission has functioned properly and effectively within the original intent of its purpose as mandated by the Act. The goal is to protect the Primary Zone and I believe the Commission can do so under its current guidelines.

Your consideration is appreciated.

RECEIVED

MAY 17 2004

City Clerk
City of Stockton

DTG: 12804/01ST

Sincerely,

Leroy Ornellas

Leroy Ornellas
Supervisor, Fifth District
Chair, Board of Supervisors
Commissioner, Delta Protection Commission

<input checked="" type="checkbox"/> CC	<input type="checkbox"/> HR
<input checked="" type="checkbox"/> CM	<input type="checkbox"/> IS
<input checked="" type="checkbox"/> CA	<input type="checkbox"/> LIB
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<input type="checkbox"/> EUD	<input type="checkbox"/> PD
<input type="checkbox"/> FIN	<input type="checkbox"/> PW
<input type="checkbox"/> FD	<input type="checkbox"/> COM

Cc:

The Honorable Arnold Schwarzenegger, Governor
The Secretary of Resources Mike Chrisman
Assemblymember Greg Aghazarian
Assemblymember Guy Houston
Assemblymember Barbara Matthews
Assemblymember Alan Nakanishi
State Senator Mike Machado
State Senator Charles Poochigian
San Joaquin County Board of Supervisors
League of California Cities
California State Association of Counties
Mayors of Lathrop, Lodi, Manteca, Stockton, and Tracy